



General Assembly

Substitute Bill No. 6444

January Session, 2009

* _____HB06444INS____031709_____*

AN ACT CONCERNING AUTOMOBILE INSURANCE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-686 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 The following standards, methods and criteria shall apply to the
4 making and use of rates pertaining to personal risk insurance:

5 (a) Rates shall not be excessive, inadequate or unfairly
6 discriminatory.

7 (1) A rate in a competitive market is not excessive. A rate in a
8 noncompetitive market including a rate for insurance provided
9 pursuant to sections 38a-328, 38a-329 and 38a-670 is excessive if it is
10 unreasonably high for the insurance provided.

11 (2) No rate shall be held inadequate unless (A) it is unreasonably
12 low for the insurance provided, and (B) continued use of it would
13 endanger solvency of the insurer, or unless (C) such rate is
14 unreasonably low for the insurance provided and the use of such rate
15 by the insurer using same has, or, if continued will have, the effect of
16 destroying competition or creating a monopoly.

17 (b) In determining whether rates comply with the excessiveness
18 standard in a noncompetitive market under subdivision (1) of

19 subsection (a) of this section, the inadequacy standard under
20 subdivision (2) of subsection (a) of this section and the requirement
21 that rates not be unfairly discriminatory, the following criteria shall
22 apply:

23 (1) Consideration may be given, to the extent possible, to past and
24 prospective loss experience within and outside this state, to
25 conflagration and catastrophe hazards, to a reasonable margin for
26 underwriting profit and contingencies, to past and prospective
27 expenses both country-wide and those specially applicable to this
28 state, to investment income earned or realized by insurers both from
29 their unearned premium and loss reserve funds, and to all other
30 factors, including judgment factors, deemed relevant within and
31 outside this state and in the case of fire insurance rates, consideration
32 may be given to the experience of the fire insurance business during
33 the most recent five-year period for which such experience is available.
34 Consideration may be given in the making and use of rates to
35 dividends, savings or unabsorbed premium deposits allowed or
36 returned by insurers to their policyholders, members or subscribers.

37 (2) (A) The systems of expense provisions included in the rates for
38 use by an insurer or group of insurers may differ from those of other
39 insurers or groups of insurers to reflect the operating methods of any
40 such insurer or group with respect to any kind of insurance, or with
41 respect to any subdivision or combination thereof.

42 (B) (i) With respect to private passenger nonfleet automobile
43 insurance, an insurer shall not allocate as flat dollar amounts to base
44 rates: (I) Producer commissions; (II) premium taxes; (III) underwriting
45 profits; or (IV) contingencies.

46 (ii) With respect to private passenger nonfleet automobile insurance,
47 an insurer shall allocate as flat dollar amounts to base rates: (I) General
48 expenses, including administration and overhead costs; (II) other
49 acquisition costs for marketing and agent field offices; and (III)
50 miscellaneous taxes, licenses and fees.

51 (iii) Each insurer shall allocate such flat dollar amounts set forth in
52 subparagraph (B)(ii) of this subdivision after any classification factors
53 set forth in subdivisions (3) and (4) of this subsection have been
54 applied to base rates.

55 (3) Risks may be grouped by classifications for the establishment of
56 rates and minimum premiums, provided that with respect to private
57 passenger nonfleet automobile insurance, any change in territorial
58 classifications shall be subject to prior approval by the Insurance
59 Commissioner, and provided no surcharge on any motor vehicle
60 liability or physical damage insurance premium [may] shall be
61 assigned for (A) any accident involving only property damage of one
62 thousand dollars or less, [or] (B) the first accident involving only
63 property damage of more than one thousand dollars which would
64 otherwise result in a surcharge to the policy of the insured, within the
65 experience period set forth in the insurer's safe driver classification
66 plan, [or] (C) any violation of section 14-219 unless such violation
67 results in the suspension or revocation of the operator's license under
68 section 14-111b, [or] (D) less than three violations of section 14-218a
69 within any one-year period, [or] (E) any accident caused by an
70 operator other than the named insured, a relative residing in the
71 named insured's household, or a person who customarily operates the
72 insured vehicle, [or] (F) the first or second accident within the current
73 experience period in relation to which the insured was not convicted of
74 a moving traffic violation and was not at fault, or (G) any motor
75 vehicle infraction. Subparagraph (G) of this subdivision shall not be
76 applicable to any plan established pursuant to section 38a-329.
77 Classification rates may be modified to produce rates for individual
78 risks in accordance with rating plans [which] that provide for
79 recognition of variations in hazards or expense provisions or both.
80 Such rating plans may include application of the judgment of the
81 insurer and may measure any differences among risks that can be
82 demonstrated to have a probable effect upon losses or expenses.

83 (4) Each rating plan shall establish appropriate eligibility criteria for

84 determining significant risks [which] that are to qualify under the plan.
85 Rating plans [which] that comply with the provisions of this
86 subdivision shall be deemed to produce rates [which] that are not
87 unfairly discriminatory.

88 (5) Notwithstanding the provisions of subdivisions (1), (3) and (4) of
89 this subsection or chapters 701 and 705, with respect to private
90 passenger nonfleet automobile insurance, an insurer shall not use an
91 applicant's or insured's credit history as a factor in underwriting or
92 rating except in accordance with this subdivision. For the purposes of
93 this section, "credit history" means any credit-related information
94 derived from or found in a credit report or credit scoring program or
95 provided in an application for personal risk insurance, and "financial
96 history measurement program" means a program that uses an
97 applicant's credit history to measure such applicant's risk of loss.

98 (A) An insurer shall file with the commissioner any financial history
99 measurement program it uses to underwrite or rate risks for private
100 passenger nonfleet automobile insurance. Such filing shall (i) include a
101 description of the program, (ii) identify the characteristics used in such
102 program from which a measurement is derived, (iii) include the rules
103 and procedures of such program, and (iv) include an explanation of
104 how such program reduces the impact of credit information and items
105 of public record on insurance rates over time. Such program shall not
106 unfairly discriminate among applicants or produce rates that are
107 excessive for the risk assumed.

108 (B) (i) An insurer that uses a financial history measurement program
109 shall submit to the commissioner documentation that demonstrates the
110 correlation between such program and the expected risk of loss, and
111 how such program impacts consumers (I) in urban territories, versus
112 consumers in nonurban territories, and (II) based on consumers' ages.
113 The commissioner may request the insurer to provide a financial
114 history measurement for a set of test examples that reflect various
115 characteristics.

116 (ii) An insurer that uses a financial history measurement program
117 shall disclose to each applicant for private passenger nonfleet
118 automobile insurance at the time of application that the applicant's
119 credit history may be used in the underwriting or rating of such
120 applicant's policy. Such disclosure shall be in writing and shall: (I) List
121 the name, address, telephone number and toll-free telephone number,
122 if applicable, of the insurer; (II) include a statement that if credit
123 information is obtained or used, the insurer shall provide more
124 detailed information concerning how the credit information was used
125 to underwrite or rate the policy. Such information may be provided in
126 the disclosure form itself; (III) be printed in reasonably conspicuous
127 type; (IV) be provided by the insurer electronically, by mail or by hand
128 delivery; and (V) contain a summary of consumer protections set forth
129 in law.

130 (C) (i) An insurer may use a financial history measurement program
131 to underwrite or rate risks for new automobile insurance policies only,
132 except that an insured may request to be reevaluated upon renewal
133 through such program based on current credit history.

134 (ii) An insurer shall not use the following characteristics in a
135 financial history measurement program: (I) The number of credit
136 inquiries in an applicant's credit report or credit history; (II) the
137 applicant's purchase or financing of a specific item; (III) the applicant's
138 use of a particular type of credit card, debit card or charge card; (IV)
139 the applicant's total available line of credit; (V) any disputed credit
140 information while such dispute is under review by a credit reporting
141 company; (VI) debt incurred by the applicant from financing hospital
142 payments or medical expenses; and (VII) the applicant's lack of credit
143 history.

144 (D) (i) An insurer shall not use an insured's or applicant's credit
145 history or a financial history measurement program if such history has
146 been adversely impacted by an extraordinary life circumstance that
147 occurred not later than three years before the date of application. As
148 used in this subparagraph, "extraordinary life circumstance" means (I)

149 an acute or chronic medical condition, illness, injury or disease, (II)
150 divorce, (III) the death of a spouse, child or parent, (IV) the involuntary
151 loss of employment for more than three consecutive months, (V)
152 identity theft, (VI) total or other loss that makes a home uninhabitable,
153 or (VII) other circumstances as adopted in regulations by the
154 commissioner, in accordance with chapter 54.

155 (ii) An insurer may request documentation and additional
156 information from an applicant to verify the occurrence of the
157 extraordinary life circumstance. Such request shall be made in writing
158 on a standard form that has been approved by the commissioner. Any
159 such documentation or information shall be kept confidential.

160 (E) After an insurer's financial history measurement program has
161 been in effect for two years, such insurer shall submit a report to the
162 commissioner on the use of such program in the state. Such report
163 shall include information that demonstrates that such program results
164 in rates that are supported by the data and that are not unfairly
165 discriminatory, and an analysis of consumer complaints to the insurer
166 resulting from such insurer's use of a financial history measurement
167 program, such that is sufficient to identify the basis for the complaints
168 and any subsequent insurer action.

169 (c) Notwithstanding the provisions of subsections (a) and (b) of this
170 section, no rate shall include any adjustment designed to recover
171 underwriting or operating losses incurred out-of-state.

172 (d) (1) The commissioner [may] shall adopt regulations, in
173 accordance with the provisions of chapter 54, concerning rating plans
174 [to effectuate the provisions of this section] and any provisions that
175 pertain to the underwriting, classification or rating of risks for
176 automobile insurance in this state.

177 (2) Not later than January 1, 2010, the commissioner shall adopt by
178 regulation, in accordance with chapter 54, the most current guidelines
179 and bulletins issued by the department and in effect that pertain to the

180 underwriting, classification or rating of risks for automobile insurance
181 in this state, including, but not limited to, the weight assigned to
182 individual territorial loss cost data and state-wide average loss cost
183 data for territorial classifications.

184 Sec. 2. Section 38a-358 of the general statutes is repealed and the
185 following is substituted in lieu thereof (*Effective October 1, 2009*):

186 (a) The declination, cancellation or nonrenewal of a policy for
187 private passenger nonfleet automobile insurance is prohibited if the
188 declination, cancellation or nonrenewal is based: (1) On the race,
189 religion, nationality or ethnicity of the applicant or named insured; (2)
190 solely on the lawful occupation or profession of the applicant or
191 named insured, except that this provision shall not apply to any
192 insurer which limits its market to one lawful occupation or profession
193 or to several related lawful occupations or professions; (3) on the
194 principal location of the insured motor vehicle unless such decision is
195 for a business purpose which is not a mere pretext for unfair
196 discrimination; (4) solely on the age, sex or marital status of an
197 applicant or an insured, except that this subdivision shall not apply to
198 an insurer in an insurer group if one or more other insurers in the
199 group would not decline an application for essentially similar coverage
200 based upon such reasons; (5) on the fact that the applicant or named
201 insured previously obtained insurance coverage through a residual
202 market; (6) on the fact that another insurer previously declined to
203 insure the applicant or terminated an existing policy in which the
204 applicant was the named insured; [or] (7) the first or second accident
205 within the current experience period in relation to which the applicant
206 or insured was not convicted of a moving traffic violation and was not
207 at fault; or (8) solely on the basis of information contained in an
208 insured's or applicant's credit history or credit rating, or solely on the
209 basis of an applicant's lack of credit history. For the purposes of
210 subdivision (8) of this subsection, an insurer shall not be deemed to
211 have cancelled, nonrenewed or declined a policy if coverage is
212 available through an affiliated insurer.

213 (b) (1) If an insurer takes an adverse action that is due at least in part
214 to the information contained in an insured's or applicant's credit
215 report, such insurer shall (A) disclose to such insured or applicant that
216 such adverse action was based on the credit report of such insured or
217 applicant, and (B) inform such insured or applicant that such insured
218 or applicant is entitled to a free copy of such credit report and where
219 such report can be obtained.

220 (2) An adverse action includes (A) the denial of coverage to an
221 insured or applicant or the offering of restricted coverage, (B) the
222 denial of a discounted or lower rate to an insured or applicant, (C) the
223 offering of a reduced discount to an insured or applicant, (D) the
224 offering of a higher rate, (E) the assignment of an insured or applicant
225 to a higher rate tier or to a higher-priced company within an insurer
226 group, or (F) any other action that adversely impacts an insured or
227 applicant due to the financial history measurement program.

228 Sec. 3. Section 38a-343 of the general statutes is repealed and the
229 following is substituted in lieu thereof (*Effective October 1, 2009*):

230 (a) No notice of cancellation of a policy to which section 38a-342
231 applies [may] shall be effective unless sent, by registered or certified
232 mail or by mail evidenced by a certificate of mailing, or delivered by
233 the insurer to the named insured, and any third party designated
234 pursuant to section 38a-323a, at least forty-five days before the
235 effective date of cancellation, except that (1) where cancellation is for
236 nonpayment of the first premium on a new policy, at least fifteen days'
237 notice of cancellation accompanied by the reason for cancellation shall
238 be given, and (2) where cancellation is for nonpayment of any other
239 premium, at least ten days' notice of cancellation accompanied by the
240 reason for cancellation shall be given. No notice of cancellation of a
241 policy which has been in effect for less than sixty days [may] shall be
242 effective unless mailed or delivered by the insurer to the insured and
243 any third party designee at least forty-five days before the effective
244 date of cancellation, provided (A) at least fifteen days' notice shall be
245 given where cancellation is for nonpayment of the first premium on a

246 new policy, and (B) at least ten days' notice shall be given where
247 cancellation is for nonpayment of any other premium or material
248 misrepresentation. The notice of cancellation shall state or be
249 accompanied by a statement specifying the reason for such
250 cancellation. Any notice of cancellation for nonpayment of the first
251 premium on a new policy may be retroactive to the effective date of
252 such policy, provided at least fifteen days' notice has been given to the
253 insured and any third party designee and payment of such premium
254 has not been received during such notice period.

255 (b) Where a private passenger motor vehicle liability insurance
256 company sends a notice of cancellation under subsection (a) of this
257 section to the named insured of a private passenger motor vehicle
258 liability insurance policy, or a third party designee, such company
259 shall provide with such notice a warning, in a form approved by the
260 Commissioner of Motor Vehicles and the Insurance Commissioner,
261 which informs the named insured that (1) the cancellation will be
262 reported to the Commissioner of Motor Vehicles; (2) the named
263 insured may be receiving one or more mail inquiries from the
264 Commissioner of Motor Vehicles, concerning whether or not required
265 insurance coverage is being maintained, and that the named insured
266 must respond to these inquiries; (3) if the required insurance coverage
267 lapses at any time, the Commissioner of Motor Vehicles may suspend
268 the registration or registrations for the vehicle or vehicles under the
269 policy and the number plates will be subject to confiscation and any
270 person operating any such vehicle will be subject to legal penalties for
271 operating a motor vehicle with a suspended registration; (4) the named
272 insured will not be able to have the registration restored or obtain a
273 new registration, or any other registration or renewal in the insured's
274 name, except upon presentation to the Commissioner of Motor
275 Vehicles of evidence of required security or coverage and the entering
276 into of a consent agreement with the commissioner in accordance with
277 the provisions of section 14-12g.

278 (c) If a passenger motor vehicle liability insurance company cancels

279 a private passenger motor vehicle liability insurance policy pursuant to
280 section 38a-342, such company shall send a written notice of such
281 cancellation to any lienholder shown on the records of such company
282 as having a legal interest in such motor vehicle.

283 [(c)] (d) This section shall not apply to nonrenewal or if the private
284 passenger motor vehicle liability insurance policy is transferred from
285 an insurer to an affiliate of such insurer for another policy with no
286 interruption of coverage and contains the same terms, conditions and
287 provisions, including policy limits, as the transferred policy, except
288 that the insurer to which the policy is transferred shall not be
289 prohibited from applying its rates and rating plans at the time of
290 renewal.

291 Sec. 4. Section 14-12h of the general statutes is repealed and the
292 following is substituted in lieu thereof (*Effective October 1, 2009*):

293 (a) The Commissioner of Motor Vehicles shall compile and maintain
294 a record of all registrations suspended in accordance with the
295 provisions of sections 14-12c and 14-12g. The commissioner shall
296 update the information contained in such record not less than once per
297 week and shall make available to all law enforcement agencies in this
298 state a list of all registration number plates for vehicles whose
299 registration has been suspended. Such list shall contain the number
300 plate numbers, letters or number and letter combinations and the
301 address at which the vehicle was registered. The commissioner may
302 make available the entire list or a portion thereof and may utilize one
303 or more formats for presenting the information contained therein to
304 facilitate its use.

305 (b) (1) If any police officer observes a motor vehicle being operated
306 upon the public highway, and such motor vehicle is displaying
307 registration number plates identified as suspended on the list made
308 available by the commissioner, such police officer may (A) stop or
309 detain such vehicle and its occupants, (B) issue to the operator a
310 complaint for operating an unregistered motor vehicle, or expired

311 registration if the vehicle is not being operated, in violation of section
312 14-12, and (C) remove the registration number plates from the vehicle
313 and return them to any branch office of the Department of Motor
314 Vehicles. If any police officer, motor vehicle inspector or constable
315 observes a motor vehicle parked in any parking area, as defined in
316 section 14-212, and such motor vehicle is displaying registration
317 number plates identified as suspended on the list made available by
318 the commissioner, such police officer, motor vehicle inspector or
319 constable is authorized to remove the registration number plates from
320 the vehicle and to return them to any branch office of the Department
321 of Motor Vehicles. If a number plate is identified as suspended on the
322 list provided by the commissioner and such identification is in error,
323 the state shall indemnify any police officer, motor vehicle inspector or
324 constable for any claim for damages made against that individual as a
325 result of such individual's good faith reliance on the accuracy of the list
326 provided by the commissioner regarding the confiscation of number
327 plates.

328 (2) If any police officer observes a motor vehicle being operated
329 upon the public highway or parked in any parking area, as defined in
330 section 14-212, displaying registration number plates identified on the
331 list made available by the commissioner as being suspended, such
332 police officer may seize and impound the vehicle. If a police officer
333 seizes and impounds a vehicle pursuant to this subdivision, such
334 officer shall give notice to the commissioner in such form as the
335 commissioner may require. The police officer shall give such notice not
336 later than three days after seizing and impounding the vehicle.

337 (c) Any motor vehicle [which] that has been impounded in
338 accordance with the provisions of subdivision (2) of subsection (b) of
339 this section shall not be released to the owner or person otherwise
340 entitled to possession of the vehicle unless such owner or person
341 presents a valid registration and a current automobile insurance
342 identification card. Any such impounded motor vehicle that is not
343 reclaimed by the owner of such motor vehicle within forty-five days

344 after impounding [] shall be subject to forfeiture to the state.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>October 1, 2009</i>	38a-686
Sec. 2	<i>October 1, 2009</i>	38a-358
Sec. 3	<i>October 1, 2009</i>	38a-343
Sec. 4	<i>October 1, 2009</i>	14-12h

INS *Joint Favorable Subst.*